

No. D-1-GV-14-000500

COUNTY OF LA SALLE,

§

IN THE DISTRICT COURT

Plaintiff,

§

§

§

VS.

§

353RD JUDICIAL DISTRICT

§

JOE WEBER, in his official capacity as

§

Executive Director of the Texas Department of

§

Transportation; THE TEXAS DEPARTMENT

§

DEPARTMENT OF TRANSPORTATION;

§

TED HOUGHTON, in his official capacity as

§

Chairman of the Texas Transportation

§

Commission; JEFF AUSTIN, III, in his official

§

capacity as Commissioner of the Texas

§

Transportation Commission; JEFF MOSELEY,

§

in his official capacity as Commissioner of the

§

Texas Transportation Commission; FRED

§

UNDERWOOD, in his official capacity as

§

Commissioner of the Texas Transportation

§

Commission; and VICTOR VANDERGRIFF,

§

in his official capacity as Commissioner of the

§

Texas Transportation Commission

§

TRAVIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

1. This suit concerns the County Transportation Infrastructure Fund ("TIF") grant program that the Legislature created in 2013 to provide additional infrastructure resources to those counties whose roads have been most severely degraded by heavy vehicles involved in the booming Texas's oil and gas industry. Defendants have begun to implement the TIF in a manner contrary to state law. This suit seeks declaratory and

injunctive relief to ensure that Defendants do not act contrary to the Legislature's very specific mandate for determining county eligibility for TIF grants.

2. Venue is mandatory in Travis County under Government Code §2001.038. It would also be permissible in Travis County, the headquarters of the Texas Department of Transportation and the location of the decisions giving rise to these claims.

3. Discovery in this case should be conducted at Level 3. A jury is requested on any questions of fact.

4. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose the information or material described in Rule 194.2 within 30 days.

PARTIES

5. Plaintiff La Salle County is a political subdivision of the State of Texas.

6. Defendant Texas Department of Transportation (TxDOT) is an agency of the State of Texas. The other defendants are sued as officials responsible for TxDOT:

(a) Joe Weber, in his capacity as Executive Director of the Texas Department of Transportation. Weber assumed this office on April 23, 2014 and now has legal responsibility to act within with the legislative mandates of the TIF grant program.

(b) Ted Houghton, in his capacity as Chairman of the Texas Transportation Commission, which governs TxDOT.

(c) Jeff Austin, III, in his capacity as a Commissioner of the Texas Transportation Commission, which governs TxDOT.

(d) Jeff Moseley, in his capacity as a Commissioner of the Texas Transportation Commission, which governs TxDOT.

(e) Fred Underwood, in his capacity as a Commissioner of the Texas Transportation Commission, which governs TxDOT.

(f) Victor Vandergriff, in his capacity as a Commissioner of the Texas Transportation Commission, which governs TxDOT.

FACTS

7. The County of La Salle lies in the heart of the Eagle Ford Shale oil and gas region. Since the first well in 2008, production of oil and gas in this relatively sparsely populated region of the state has boomed, due in part to modern techniques such as hydraulic fracturing and horizontal drilling. La Salle County now ranks third out of Texas's 254 counties in oil-and-gas production volume; the only two counties ranked higher are also located in the Eagle Ford Shale

8. The heavy equipment and constant flow of truck traffic involved in this hydraulic-fracturing drilling boom have caused extraordinary damage and impact to local road systems traversing these counties.

9. In a presentation titled, "Energy Sector Impacts to the Texas Transportation System," TxDOT Deputy Director John Barton reported that, in one area using hydraulic-fracturing techniques, it took: 1184 loaded trucks to bring one gas well into production; 353 loaded trucks per year to maintain; and an additional 997 loaded trucks every 5 years to "re-frac" the well. The presentation equated that burden to 8 million car trips to create

a well and an additional 2 million car-trips per year to operate and maintain the well's production. Those numbers were for "one gas well."¹

10. La Salle County, which had a population of 6,886 in the 2010 Census, has approximately 2,031 wells. Using the impact estimates above for "one gas well," the truck traffic to drill and produce those wells would roughly equate to 16 billion car trips. The traffic needed to operate them approximates 4 billion car trips—each year.

11. County roads have been severely affected and suffered enormous wear and damage from this extraordinary level of additional traffic as heavy trucks have traveled to well locations. Roads winding through counties such as plaintiff La Salle County were not designed or built for such wear, and individual county budgets are ill-equipped to solve this crisis.

**THE LEGISLATIVE SOLUTION FOCUSED AID
TO COUNTIES THAT HAVE BEEN THE HARDEST HIT**

12. In 2013, the Texas Legislature took a first step toward addressing these county needs with a \$450 million supplemental road appropriation in House Bill 1025. Half of that amount, or \$225 million, was assigned "to [TxDOT] to be transferred to the Transportation Infrastructure Fund for the purposes of implementing the provisions of SB1747 or similar legislation." Tex. H.B. 1025 §40(b), 83rd Leg., R.S. (2013).

13. Senate Bill 1747, in turn, provides the legal framework for TxDOT's handling of the TIF grants. It applies not only to the \$225 million appropriated by House Bill 1025 but also to any federal funds received that are credited to the fund, any "gift or

¹ John A. Barton, P.E., "Energy Sector Impacts to Texas's Transportation System," available at http://ftp.dot.state.tx.us/pub/txdot-info/energy/presentation_041312.pdf.

grant” received to pay for these roads, certain “fee[s] paid into the fund,” and the investment earnings on the fund, as well as any future legislative appropriations. TEX. TRANSP. CODE §256.102. The statutory framework is designed to last. It contemplates that counties may make a “second or subsequent application for a grant,” as funds are available. TEX. TRANSP. CODE §256.106.

14. Central to the design of the TIF program is that not every county will receive these grant funds. Instead, TIF funds were meant for roads “located in areas of the state affected by increased oil and gas production.” TEX. TRANSP. CODE §256.103. The TxDOT rules thus state that, “[t]o be eligible for a grant from the fund, a county must: (1) be entirely or partially in an area affected by increased oil and gas production ...” TxDOT Rules §15.182.

15. To apply, counties must create certain local government bodies to administer the grants and agree to certain other conditions. The day-to-day oversight of these grants is administered through TxDOT.

16. The Legislature conditioned eligibility for these grant funds on counties complying with a new reporting requirement that would tell the Legislature and TxDOT much more detail about the root causes of the degradation of Texas roads. TEX. TRANSP. CODE §256.106 & §251.018.

17. And the allocation of funds across counties was set by legislative formula. “Grants distributed during a fiscal year must be allocated among counties as follows...” TEX. TRANSP. CODE §256.103(b) (20% based on weight tolerance permits, 20% based on

oil and gas production taxes, 50% based on well completions, and 10% based on the volume of waste injected). The details of that formula are not at issue here.

18. The significance is that, in this grant program for counties, the Legislature did not authorize TxDOT to shape its own policy priorities. The Court is not being asked to second-guess any aspect of policymaking. Instead, TxDOT's role at this stage is merely as gatekeeper—to determine whether eligible counties have submitted valid applications for permissible projects. The political and policy task of deciding the ratio of which scarce funds should go to which classes of counties was already made by the Texas Legislature. The apportionment formula can be applied mechanically, once TxDOT has properly winnowed down the set of eligible counties and valid applications.

**TO SERVE THAT PURPOSE, ELIGIBILITY
FOR FUNDS IS TIED TO COMPLIANCE
WITH STATUTORY PREREQUISITES**

19. Senate Bill 1747 of the 83rd Legislature set requirements for counties to be eligible for funding as authorized under House Bill 1025. The requirements of Senate Bill 1747 were incorporated into rules adopted by the Texas Transportation Commission on November 21, 2013. TxDOT Rules §§15.180-196

20. As part of those requirements, Senate Bill 1747 also described a “road condition report.” TEX. TRANSP. CODE §251.018. Now, such reports “must include the primary cause of any road, culvert, or bridge degradation, if reasonably ascertained.” *Id.* This reporting requirement will enable the Legislature and TxDOT, as well as other counties, to make appropriate funding decisions in future years.

21. How these reports would be linked to TIF grants was the subject of negotiations between the House and Senate versions of the bill. The version introduced in the Senate required “the two most recent” iterations of a more relaxed type of road condition report, which lacked the specific requirements of §251.018, but only for certain counties. The Senate-passed version did include §251.018 and also required all applications to include these strengthened reports “for the previous two years.” Tex. S.B. 1747, 83rd Leg., R.S. (engrossed version: April 23, 2013). The House-passed version had no such requirement for initial applications to the TIF grant fund, but would have required subsequent applications by the same county to include the most recent report. Tex. S.B. 1747, 83rd Leg., R.S. (May 22, 2013). The Senate did not concur in the House version, and the bill went to conference committee.

22. The version that emerged from a conference committee and was ultimately signed into law was a compromise. It requires all applications made to the TIF grant fund include “a road condition report described by [§251.018] made by the county for the preceding year.” TEX. TRANSP. CODE §256.104(a)(1). This same requirement appears in the TxDOT rules about the validity of county applications. TxDOT Rules §15.188(c)(1). Rule 15.184 stipulates that TxDOT will award a grant to each “eligible” county that submits a “valid” application in accordance with Section 15.188.

23. La Salle County submitted an application that scrupulously complied with these requirements, including paying for engineering studies necessary to fully comply with the detailed requirements of §251.018. La Salle County is also a county whose roads have been greatly affected by recent increases in oil and gas production. La Salle

County thus has an interest in ensuring that TxDOT strictly applies these requirements to ensure that grant funds are focused on eligible counties.

**TXDOT'S RELUCTANCE TO ENFORCE THESE
STATUTORY ELIGIBILITY REQUIREMENTS
UNDERMINES THE LEGISLATIVE GOAL**

24. TxDOT and the other Defendants have failed to apply these statutory requirements or to follow their own rules reiterating those requirements. As a result, TxDOT has proposed an allocation that will spread the \$225 million across 191 separate counties, ensuring that those counties truly most affected receive less help than intended.

25. TxDOT created an “application period” of March 7 to March 14, 2014 for the TIF grant program. Compliance with this application period is necessary for a county’s application to be valid, under the TxDOT rules. TxDOT Rules §15.188(a)(4). According to the TxDOT website, that window is now “closed.”

26. Subsequently, TxDOT published on its website the statement that it had “finalized application review and has calculated eligible grant awards for all eligible applicant counties.”² The website also included a map of “counties that applied” and a chart showing how it intended to allocate the funds based on which counties had applied. Neither the map nor the chart, nor any other document on the website, suggests that TxDOT made the required distinction between eligible and ineligible counties.

27. For example, the TxDOT “estimated vs. actual” allocation chart published on that webpage shows the “Original Formula Allotment” was calculated “assuming all

² <http://www.txdot.gov/government/funding/county-fund.html> (as visited April 28, 2014).

254 counties apply.”³ From that baseline, TxDOT made adjustments upward based on a “re-allocation” of the shares it had originally “assum[ed]” would go to the 63 counties that chose not to submit any application.

28. Consistent with the legislative purpose, the TxDOT rules also state that: “To be eligible for a grant from the fund, a county must: (1) be entirely or partially in an area affected by increased oil and gas production ...” TxDOT Rules §15.182. There is no indication that TxDOT applied this rule to actually determine county eligibility.

29. The TxDOT rules state that an award will be made “to each eligible county that submits a valid application in accordance with [rule] §15.188.” TxDOT Rules §15.184(a). In turn, §15.188(c)(1) echoes the statutory requirement that each county applying for funds include “a road condition report described by Transportation Code, §251.018 made by the county for the preceding year.”

30. There is no indication that TxDOT has yet enforced these statutory requirements to filter county applications. Nor did TxDOT follow its own rules in that regard, which also demand the same list of elements for county applications.

31. La Salle County, through its county judge, attempted to determine other counties’ compliance with these statutory requirements. This research indicated that numerous other counties did not comply with all statutory and rule-based requirements—including but not limited to the detailed road condition report described by §251.018.

32. La Salle County shared its research with TxDOT. TxDOT did not reply, and it has not explained why it is disregarding the statutory and rule-based prerequisites.

³ <http://ftp.dot.state.tx.us/pub/txdot-info/energy/sb1747/estimated-vs-actual.pdf>.

33. Because TxDOT pressed forward without filtering out applications from counties that failed to meet the eligibility requirements set by the Legislature and by the TxDOT rule-making process, it threatens to dilute the effect of the TIF grant program. The Legislature's award, once chopped into 191 unequal pieces, will be of only blunted impact in those regions, such as La Salle County, whose roads have borne the heaviest load of the Texas energy boom.

RELIEF SOUGHT

34. Plaintiff prays for a declaratory judgment under Civil Practice and Remedies Code chapter 37 and Government Code §2001.038, interpreting the statutes and rules governing this grant program to remove any existing uncertainty about the requirements for county eligibility during this initial round of grants. And, in the future, if counties need not go through the expense of preparing the road condition reports that appear to be mandated by statutes, then strapped county budgets may benefit. On the other hand, if the statute and rules indeed mean what they say, then applicants for future rounds of funding need to know to comply.

35. Plaintiff prays for declaratory and injunctive relief preventing Defendants from moving forward with the current round of TIF program grants outside of strict compliance with the governing statutes and rules. In particular, Defendants should be enjoined from countersigning any of the draft "Standard Agreement" contracts that may be returned by ineligible counties or those whose initial applications were invalid. To the extent that Defendants have already taken that step in contravention of state law, they

should be enjoined that their next steps under the TIF grant program for any such counties without first exercising their statutory and rule-based tools to cure or terminate.

36. Plaintiff also prays for preliminary injunctive relief and a temporary restraining order to the same effect.

37. Plaintiff also prays for attorney's fees under the Declaratory Judgments Act. La Salle County brought these questions to TxDOT's attention before suit was filed, and yet Defendants have ignored those inquiries. Litigation was the sole remaining mechanism to obtain certainty. Accordingly, an award of attorney's fees under the Declaratory Judgments Act would be equitable and just because removing the uncertainty will assist not only La Salle County, but all potentially eligible counties.

PRAYER

Plaintiff prays for a declaratory judgment; preliminary and permanent injunctive relief; attorney's fees, and other relief to which it may be entitled at law or equity.

Respectfully submitted,

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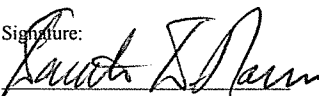
CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED COUNTY OF LA SALLE V. JOE WEBER, ET AL.

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: _____ Email: _____ DONATO D. RAMOS mrodriguez@ddrlex.com Address: _____ Telephone: _____ 6721 McPherson, Suite 350 (956) 722-9909 City/State/Zip: _____ Fax: _____ Laredo/Tx/78041 (956) 727-5884 Signature: _____ State Bar No: _____  16508000		Names of parties in case: Plaintiff(s)/Petitioner(s): _____ County of La Salle Defendant(s)/Respondent(s): _____ Joe Weber, in his official capacity as Executive Director of the Texas Department of _____ [Attach additional page as necessary to list all parties]		Person or entity completing sheet is: <input type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____				
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____				
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input checked="" type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment <input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover			
4. Indicate damages sought (do not select if it is a family law case): <input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					

Defendant(s) continued:

(a) Joe Weber, in his capacity as Executive Director of the Texas Department of Transportation. Weber assumed this office on April 23, 2014 and now has legal responsibility to act within with the legislative mandates of the TIF grant program.

(b) Ted Houghton, in his capacity as Chairman of the Texas Transportation Commission, which governs TxDOT.

(c) Jeff Austin, III, in his capacity as a Commissioner of the Texas Transportation Commission, which governs TxDOT.

(d) Jeff Moseley, in his capacity as a Commissioner of the Texas Transportation Commission, which governs TxDOT.

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